

BIRMINGHAM CITY COUNCIL

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

13 DECEMBER 2017

ALL WARDS

NON ATTENDANCE OF DRIVERS AT SUB COMMITTEES

1 Summary

- 1.1 At the meeting of your Committee on 12 April 2017 it was resolved that a report should be presented to consider options for making a charge on drivers who fail to attend appointments to appear before meetings of the Licensing Sub-Committees.
- 1.2 The rationale for the request was to discourage drivers from not attending appointments for hearings, to avoid wasted time and resources associated with non-attendance and where drivers have failed to attend to recover wasted costs associated to the hearing.
- 1.3 The conclusion of this report is that the cost of administering hearings is already included in the licence fee that all drivers pay and, therefore, this would not be permissible.
- 1.4 A proportion of people who appear at Sub-Committees are there to ask for exemptions from standard conditions before making a licence application or to establish whether they would be considered 'fit and proper' for the grant of a licence. In those cases they have not paid a fee because they have not completed an application. Where they fail to attend we do not recover any money from them.
- 1.5 With the introduction of a new IT system in Licensing, scheduled for spring 2018 it will not be possible for these types of application to proceed to a meeting of a Licensing Sub-Committee without the applicant first paying the appropriate fee,

2. Recommendations

- 2.1 That the report be noted.
- 2.2 That outstanding minute no. 846 of 12 April 2017 be discharged.

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3. Background

3.1 In April 2017 your Committee asked officers to consider options for charging drivers who fail to attend appointments to appear before hearings of the Licensing Sub Committees. The purpose of this request was threefold:

- To encourage drivers to keep their appointments / discourage them from not attending.
- To reduce the amount of wasted time for members and officers when drivers fail to attend appointments.
- To recover the cost associated to convening a hearing with members and officers when drivers do not attend.

4. Fee Recovery

4.1 In order to make a charge for the provision of a service, a local authority must have a statutory power to do so. The power will derive from an Act of Parliament or secondary legislation such as an Order or Regulations. Our ability to charge a fee to license drivers of hackney carriages and private hire vehicles is contained in Section 53(2) of the Local Government (Miscellaneous Provisions) Act 1976:

'53(2) Notwithstanding the provisions of the Act of 1847, a district council may demand and recover for the grant to any person of a licence to drive a hackney carriage, or a private hire vehicle, as the case may be, such a fee as they consider reasonable with a view to recovering the costs of issue and administration and may remit the whole or part of the fee in respect of a private hire vehicle in any case in which they think it appropriate to do so.'

4.2 The above section permits a local authority to charge a fee for the cost of issue and administration of a driver's licence. 'Administration' in this context includes the cost of dealing with matters that arise in the course of a driver's licence which have to be dealt with by Sub-Committees. It should also be noted that the section says that a District Council may 'demand and recover such a fee as they consider reasonable to recover the cost of issue and administration...' The reference to recovering the cost is important, because that is the basis of the principle by which a local authority must set its licence fees for drivers. The fee must be calculated to recover costs.

4.3 Licence fees for drivers are calculated every year. The costs associated to running Sub-Committees are included in the fee calculation for drivers by sharing the total cost of administering Sub-Committees between each licence fee. Consequently the fees that have been set recover the cost of administering our Sub-Committees. To charge another fee for drivers that do not attend their hearing would result in an over-recovery of costs, which is not permitted by Section 53(2) of the Local Government (Miscellaneous Provisions) Act 1976.

- 4.4 Aside from those drivers who appear before Sub-Committees during the lifetime of their licences, the Sub-Committees also deal with applications from people who have not yet applied for a licence and have not paid a licence fee at that stage, but if their application is granted they will generally go on to apply for a licence. If they have failed to attend a Sub-Committee meeting the cost of their non-attendance will be recovered when they make their application. Therefore, there is a minority of people who do not contribute towards the cost of running Sub-Committees because they have applied for an exemption which has been refused. These are typically people with criminal convictions who want to know whether they will be accepted as 'fit and proper' before making a full application, or vehicle proprietors who are seeking exemptions from signage policy.
- 4.5 The Licensing Service is purchasing a new licensing IT system to administer the grant and administration of licences. The new system is expected to be ready by the spring of 2018. It will be an on-line system that will require applicants for a licence to pay an 'application fee' before we will process their application. This would include circumstances where an applicant was asking for an exemption. This system will ensure that a fee is taken from every person who appears before a Sub-Committee in advance. Under the new system, once an applicant has been assessed as suitable for a licence they will be asked for a separate 'licence fee' to cover the balance of the licence cost, which will include compliance.

5. Conclusion

- 5.1 The Local Government (Miscellaneous Provisions) Act 1976 permits district councils to recover the cost of the Licensing Service in respect of hackney carriage and private hire drivers and the cost of administering our sub-committees in Birmingham is recovered through drivers' fees. We cannot charge a supplement for drivers that do not attend because our costs have already been recovered once through the licence fee. A supplementary fee would result in an over-recovery of costs.
- 5.2 To be able to make a charge for non-attendance at Sub-Committees above and beyond basic fee recovery would require statutory authority and there is no statutory authority to enable us to make such a charge. Under Section 93(3) of the Local Government Act 2003 a local authority is under a general duty to ensure that, from one financial year to the next, the income from charges for services does not exceed the cost of provision.
- 5.3 Given the fact that the new licensing IT system is expected to be implemented in approximately five months, officers have considered that it would be disproportionate to develop and implement an interim manual charging system for people applying for exemptions.

6. Consultation

- 6.1 No consultation has been carried out in respect of this report, which is for information only.

7. Implications for Resources

- 7.1 The cost of administering licensing sub committees is recovered through licence fees.

8. Implications for Policy Priorities

- 8.1 The Corporate Charging Policy and Financial Regulations require that fees and charges levied by the Licensing and Public Protection Committee be reviewed on an annual basis to ensure the continued full recovery of costs. The contents of this report are consistent with our Corporate Charging Policy.

9. Public Sector Equality Duty

- 9.1 Under the Duty we must have regard to the need to:
- Eliminate unlawful discrimination, harassment, and victimisation and other conduct prohibited by the Act.
 - Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - Foster good relations between people who share a protected characteristic and those who do not.
- 9.2 The recommendations contained in this report have no impact on any of the Council's duties under the Equality Act 2010.

ACTING DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: nil